



CENTER FOR FOOD SAFETY

May 12, 2022

Submitted via FOIAOnline

U.S. Environmental Protection Agency
Office of Pesticide Programs
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

FREEDOM OF INFORMATION ACT REQUEST

The Center for Food Safety (CFS) is a 501(c)(3) national nonprofit public interest and environmental advocacy organization working to protect human health and the environment through litigation, public education, and science-based advocacy. CFS works to maintain strong government regulations and policies related to pesticides and genetically engineered crops. Consistent with this mission and pursuant to the Freedom of Information Act, 5 U.S.C. § 552, CFS respectfully requests the following records cited in EPA's Enlist Duo and Enlist One Registration Docket ([EPA-HQ-OPP-2021-0957](#)):

- Kynetec USA, Inc. 2020. "The AgroTrak® Study from Kynetec USA, Inc." iMap Software. Database Subset: 2015-2019¹
- U.S. EPA, 2,4-D CHOLINE: RESPONSE TO WHITE PAPERS SUBMITTED BY CORTEVA RELEVANT TO RUNOFF EXPOSURE & RISKS OF 2,4-D TO LISTED SPECIES IN WETLAND & TERRESTRIAL HABITATS THAT RECEIVE RUNOFF FROM ENLIST-TREATED CORN, COTTON, OR SOYBEAN (2021) (DP 463523)²
- U.S. EPA, 2,4-D: EFED RESPONSES TO CORTEVA'S SUBMISSIONS OF THREE WHITE PAPERS (MRIDs 51667101, 51667103, 51667104) & SUMMARIES OF REVIEWS FOR NINE OPEN LITERATURE LEPIDOPTERAN STUDIES (2021) (DP# 463524)³
- D. Simpson, White Paper on Enlist™ Weed Control System & Weed Resistance Management (2021) (white paper submitted to U.S. EPA by Corteva, MRID 51564401)⁴
- Confidential Appendices⁵

¹ This document is cited in John Orłowski et al., Biological Analysis Branch, [Use, Usage, and Current and Future Benefits of Enlist One and Enlist Duo Herbicides in Corn, Soybean, and Cotton](#) (Jan. 11, 2022) [hereinafter "2022 Enlist Benefits Memo"].

² This document is cited in Frank T. Farruggia et al., Environmental Risk Branch, [2022 Ecological Risk & Endangered Species Assessment for Use on Genetically-Modified Herbicide-Tolerant Corn, Soybean, and Cotton in Support of Registration Renewal Decision for Enlist One and Enlist Duo Products](#) (Jan. 10, 2022) [hereinafter "2022 Enlist Ecological Risk Assessment"].

³ This document is cited in EPA's 2022 Enlist Ecological Risk Assessment.

⁴ This document is cited in EPA's 2022 Enlist Benefits Memo.

⁵ This document is cited in EPA's 2022 Enlist Benefits Memo.

The term “records” includes documents, correspondence (including correspondence between agency officials, staff members, and contractors, as well entities or individuals outside the federal government), emails (including any attachments), letters, notes, recordings, telephone logs, minutes, memoranda, comments, files, presentations, consultations, biological opinions, assessments, evaluations, schedules, papers, reports, studies, photographs, images, spreadsheets, data (including raw data and GIS data), maps, and/or all other materials responsive to this request.

FEE WAIVER REQUEST

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), CFS requests that EPA waive all fees in connection with the procurement of this information. As demonstrated below, the nature of this request meets the test for fee waiver as expressed in the FOIA, 5 U.S.C. § 552(a)(4)(A)(iii).

In deciding whether the fee waiver criteria is satisfied, CFS respectfully reminds EPA that FOIA has a strong presumption in favor of disclosure, and Congress enacted the fee waiver amendments to allow further disclosure to nonprofit, public interest organizations such as CFS. *See* 132 Cong. Rec. S. 14270-01 (statement of Sen. Leahy) (“[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information.”). Further, the Ninth Circuit has held that FOIA’s fee waiver should be “liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy).

I. The requested disclosure is in the public interest because it will significantly contribute to the public’s understanding of government operations and activities.

Here, disclosure of the requested information “contribute[s] significantly to public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii).

A. The disclosure directly concerns “the operations and activities of the government.”

The requested information pertains to EPA’s regulation of pesticides and herbicides in accordance with its obligations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other federal laws. It is irrefutable that EPA’s regulatory oversight of Enlist One and Enlist Duo is a clearly identifiable government operation. The requested disclosure will thus demonstrate to the public whether EPA is complying with its duties to regulate herbicides and shed a light into EPA’s decision-making process in determining to extend the registration for Enlist One and Enlist Duo.

B. The disclosure will “contribute significantly to public understanding” of the government’s operations and activities.

As discussed in the previous section, disclosure will inform the public about EPA’s regulatory oversight of pesticides and herbicides pursuant to the agency’s duties under FIFRA and other federal laws. The requested information is not available to the public. Thus, disclosure will significantly inform the public about EPA’s decision-making process, technical evaluations of

environmental impacts, conclusions, and general knowledge regarding EPA's decision to register Enlist One and Enlist Duo.

CFS is a national nonprofit public interest and environmental advocacy organization that aims to empower people, support farmers, and protect the earth from the harmful impacts of industrial agriculture, which includes the release of harmful pesticides and herbicides. CFS has over a million members across the country, including over tens of thousands of members in states approved for Enlist One and Enlist Duo use on conventional and genetically engineered corn, soybean, and cotton, who are directly affected by EPA's decision. CFS informs, educates, and counsels the public through a wide variety of communication and outreach tools, including legal action, presentations, advocacy campaigns, member emails, our online website, our True Food Network, books and reports, and our quarterly newsletter (Food Safety Now!) about the harmful impacts of industrial agriculture on human health, animal welfare, and the environment.

Through nearly two decades of involvement in science-based research, policy advocacy, and litigation relating to the environmental impacts of industrial food production, CFS has demonstrated its ability to take technical information provided by government agencies and distill it into a format that is accessible to the public. CFS regularly puts out reports on genetically engineered foods, aquaculture, pesticides, food and feed additives, organic standards, and other food-related topics that involve highly technical concepts that may be difficult for the layperson to understand without assistance or education from experts. CFS and its membership, along with the general public, are concerned about the safety and impacts of their food production on the environment, and specifically the threat of pesticide use, cross-resistance, and spray drift in states approved for Enlist One and Enlist Duo. Accordingly, CFS is an effective vehicle to disseminate information pertaining to EPA's regulatory oversight and issuance of pesticide registrations.

II. CFS has no commercial interest in obtaining the requested information.

CFS is a 501(c)(3) nonprofit environmental advocacy organization that works to reduce the harmful impacts of industrial food production on human health, animal welfare, and the environment through grassroots campaigns, public education, media outreach, policy advocacy, and litigation. Under FOIA, a "commercial interest" is one that furthers a commercial, trade, or profit interest, as those terms are commonly understood. *See e.g.*, OMB Fee Guidelines, 52 Fed. Reg. 10,017–18. Such interests are not present in this request.

In no manner does CFS seek information from the EPA for commercial gain or interest. CFS respectfully files this FOIA request to achieve its goal of educating the general public about EPA's regulatory oversight and decision-making process in issuing registrations for pesticides and herbicides, such as Enlist One and Enlist Duo. Upon request and free of charge, CFS will provide members of the public with relevant information obtained from EPA as a result of this request. Simultaneously, disclosure will help CFS fulfill its well-established goal of overseeing government operations and activities and ensuring that agencies are complying with their statutory duties to protect the public from the harmful impacts of industrial agriculture.

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CONCLUSION

Based upon the foregoing, CFS requests that EPA waive any and all fees for this request and promptly send the requested information, as required by law. Under FOIA, EPA must respond to this request within **20** working days. 5 U.S.C. § 552(a)(6)(A). If EPA determines that any of the records requested are exempt from disclosure, the law requires the agency to notify us within that twenty-day period. *Id.* Once EPA has redacted the exempt information, the agency must disclose any segregable, non-exempt information in a readily accessible format. *Id.* § 552(a)(3)(B).

Please deliver the requested records in a readily accessible format via FOIAOnline or email. If EPA is not able to send a requested record in its native file format, please send the record in a near-native file format that preserves the content and properties of the native file, including any footers, headers, hyperlinks, internal references, data, formulas, metadata, attachments, and comments.

If EPA decides to withhold any requested information, please provide a detailed description of the withheld material and the basis for withholding it. If EPA decides to withhold an entire record, please further explain why the agency could not segregate and release the nonexempt portions of the record.

Please send all correspondence related to this request to ksinclair@centerforfoodsafety.org. Thank you for your attention to this request. I look forward to hearing from you shortly.

Sincerely,

/s/ Kristina Sinclair

Kristina Sinclair

Associate Attorney

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